

REMARKS

Claims 37-57 are pending in the application.

Claims 37-57 have been rejected.

No Claims have been amended, and reconsideration is respectfully requested in light of the arguments and reasoning set forth below.

I. DOUBLE PATENTING REJECTION

Claims 37-42, 43-48, 49-54, 55 and 56 were rejected on the grounds of nonstatutory double patenting over claims in U.S. Patent No. 6,751,198. The rejection is respectfully traversed. However, Applicant is prepared to submit a timely and proper terminal disclaimer when this rejection is the only remaining rejection of the claims.

II. REJECTION UNDER 35 U.S.C. § 102

Claims 37-57 were rejected under 35 U.S.C. § 102(b) as being anticipated by Larson (US Patent 4,569,042). The rejection is respectfully traversed.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

The Office Action cites to Col. 2, lines 47-60 and Col. 3, lines 1-25 of Larson as disclosing Applicant's "processor operable for setting a transmit bit in an outgoing packet and starting a timer when the transmit bit is set, and for reading a receive bit in a received packet and stopping the timer when the receive bit is read." For ease of reference, these two cited passages of Larson are set forth below in their entirety:

. . . . According to this invention, the process of measuring the signal transmission delay through a transmission path involves transmitting across the path in one direction a first signal indicating time of its transmittal and, in response to receipt of the first signal, transmitting across the path in the other direction a second signal indicating significantly the time of transmittal of the first signal. The round-trip signal transmission delay is then determined as the difference between the time of transmittal of the first signal and the time of receipt of the second signal. The round-trip signal transmission delay is halved to obtain an approximation of the one-way signal transmission delay of the path . . . (Col. 2, lines 47-60)

. . . . In such systems, apparatus for determining the round-trip signal transmission delay is associated with each interface. At the first interface, transmitting apparatus transmits through the path a first signal that indicates the time of its transmittal. At the second interface, in response to receiving the first signal, transmitting apparatus transmits through the path a second signal that indicates the time of transmittal of the first signal. Apparatus at the first interface responds to receipt of the second signal and determines the difference between the time of transmittal of the first signal and the time of receipt of the second signal to obtain the round-trip transmission delay. Half of the round-trip delay is then taken as an approximation of the one-way signal transmission delay through the path.

To likewise allow the delay to be determined at the second interface, the above-mentioned second signal also indicates the time of its transmittal. At the first interface, in response to receiving the second signal, the transmitting apparatus transmits through the path a third signal that indicates the time of transmittal of the second signal. Apparatus at the second interface then responds to receipt of the third signal and determines the difference between the time of transmittal of the second signal and the time of receipt of the third signal to obtain at the second interface the round-trip delay. (Col. 3, lines 1-25)

Nothing in the above cited portions of Larson discloses or describes (1) setting a transmit bit in an outgoing packet and starting a timer when the transmit bit is set, or (2) reading a receive bit in a received packet and stopping the timer when the receive bit is read. Larson transmits a first source signal indicating time of its transmittal (e.g, a time stamp, see Figures 5a-5c), and upon receipt at the destination, the destination transmits in the other direction a second signal indicating the time of transmittal of the first signal. The round-trip delay is then determined from the time stamp information. Larson, Col. 2, lines 47 through Col. 3, line 25. Therefore, Larson does not disclose

starting a timer (when a transmit bit is set) and stopping the timer (when a receive bit is received). Instead, Larson uses time stamp information generated by a source. The destination receives this information and returns the time stamp information back to the source. Larson does not disclose or describe that a timer is started and stopped upon the setting of a transmit bit and receipt of a receive bit, respectively.

The Office Action also baldly asserts that Larson discloses a timer (Col. 8, lines 47-60). For ease of reference, this cited portion of Larson is set forth below in its entirety:

The call-originating terminal node 100 awaits completion of call set-up, as indicated in block 302 of FIG. 3A. If the node 100 does not sense completion of call set-up activities within a predetermined amount of time, indicated, for example, by a timeout timer, the node 100 undertakes conventional activities to drop the call, as indicated in block 312. These activities include, for example, notifying the communicating device 120 that the call cannot be completed and sending a packet to the network 10 informing it to take down the call path that the preceding call set-up packet attempted to set up.

If, however, call set-up is completed within the predetermined time, the node 100 generates a first continuity packet and transmits it to the destination node 101 through the network 10, over the physical path that has just been set up for the call, as suggested in block 303. (Col. 8, lines 46-62)

Applicant agrees that Larson discloses a timer. However, the timer of Larson is used to determine if call set-up is complete – not for timing the duration between when a transmit bit is set (in an outgoing packet) and a receive bit is received (from an incoming packet). Thus, Larson's timer is utilized for a purpose unrelated to timing when a transmit bit is set and when a receive bit is received. (See, also Figures 3A, 4A of Larson - illustrating the timer is used to time-out the call setup). Larson's timer is not started and stopped upon the setting and receiving of the transmit bit and receive bit, respectively.

Therefore, Larson fails to disclose each and every element identically as recited in the claimed invention. Accordingly, the Applicant respectfully requests the Examiner withdraw the § 102(b) rejection of Claims 37-57.

III. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@munckbutrus.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Munck Butrus Deposit Account No. 50-0208.

Respectfully submitted,

MUNCK BUTRUS CARTER, P.C.

Date: 1/28/2008



Robert D. McCutcheon
Registration No. 38,717

P.O. Drawer 800889
Dallas, Texas 75380
(972) 628-3632 (direct dial)
(972) 628-3600 (main number)
(972) 628-3616 (fax)
E-mail: *rmccutcheon@munckbutrus.com*